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LIMITATIONS OF THE STATUTORY POWER OF MAJORITY STOCKHOLDERS TO DISSOLVE A CORPORATION.

AMONG the "incidents which, as soon as a corporation is duly erected, are tacitly annexed of course," Blackstone names first that "to have perpetual succession." [1] This theoretical right of perpetual succession must in its origin have been subject to certain implied limitations, although it was seriously contended in the celebrated case of King *v.* Mayor, etc. of London [2] that immortality was an attribute of corporate life.

The cases and the manner in which a corporation may be dissolved are said by Blackstone to be the following:

"(1) by act of Parliament, which is boundless in its operations; (2) by natural death of all the members, in case of an aggregate corporation; (3) by the surrender of its franchises into the hands of the King, which is a kind of suicide." [3]

Kyd not only recognizes the implied power of voluntary dissolution, but proceeds to tell precisely how it may be brought about:

"In the nature of the thing there does not seem to be much metaphysical difficulty. That a corporation may, in point of fact, destroy itself by its own act seems as easy to be comprehended as that a natural

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[1] 1 Bl. Comm. 475.

[2] 2 Show. 263 (1683).

[3] 1 Bl. Comm. 485.

person may put an end to his life by his own hands. The acting part of the corporation put the common seal to a deed of surrender; carry up all their charters to St. James's and lay them at the King's feet; procure the surrender to be enrolled, and desert all their corporate functions: must not the consequence be that in a little time the corporate existence must be at an end?"[4]

The "acting part" of a corporation, the consent of which was necessary to dissolution, may be assumed to have embraced all who had any legal interest in the continuance of the life of the corporation. That this was so as regards membership corporations was held by Vice-Chancellor Bruce in 1845 in the case of Ward *v.* Society of Attornies.[5]

It is well established that, in the absence of an enabling statute, there is no power in the majority of the stockholders of a solvent, prosperous stock corporation to dissolve it against the protest of a single stockholder.

The leading American case upon this subject is Kean *v.* Johnson,[6] decided by the New Jersey Court of Chancery in 1853. That was a case of the sale of all the property of a railroad corporation under a statute, passed after the incorporation, purporting to authorize such a sale "with the consent of the stockholders." It was held that the statute required unanimous consent, and that a statute in terms permitting a sale upon consent of a majority would have been of no effect. The master's opinion then lays down the rule that the contract of the stockholders is that the funds contributed by them shall be employed in the business specified in the charter for the time fixed, and, when no time is limited by the charter, so long as the affairs of the company prosper, unless all consent to an earlier termination of the venture.

The doctrine of the New Jersey decision has been accepted generally by the courts of other states, and is thoroughly imbedded in our jurisprudence. In most of the decisions founded upon Kean *v.* Johnson the action or proposed action of the majority questioned by the minority consisted of the sale of all or substantially all of the property of a corporation without judicial or other proceedings for the extinguishment of the corporate franchises. These and cases of dissolution are so closely analogous that they

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[4] 2 Kyd, Corporations, 465.

[5] 1 Coll. 370.

[6] 9 N. J. Eq. 401.

may fairly be treated together.[7] In the apparent exceptions to this rule there usually will be found some element which made the continuance of the enterprise hazardous or impossible.[8]

With the adoption by the states of general laws for the formation and management of stock corporations, there was usually prescribed by statute a method by which corporations so formed might be voluntarily dissolved. In some cases the method prescribed was a judicial proceeding brought by the attorney general at the request of a prescribed proportion of the stockholders or by the stockholders directly. Sometimes the dissolution was accomplished by action of the directors acting alone or with the stockholders. The more common method is by simple vote of the stockholders, resulting in the extinguishment of the corporate existence, to be accompanied or followed by the sale of the corporate assets, payment of the debts, and the distribution of the remainder of the proceeds among the stockholders by the directors, who are usually constituted trustees for that purpose. The last-mentioned method is the one now generally in effect, and under it have arisen most of the litigated controversies which will be chiefly the subject of the present discussion.

Looking to the conditions under which these statutes were enacted to learn the reasons for the legislation and its purpose, it seems reasonably clear that the object of embracing in general corporation laws a provision for dissolution was to enable the major-

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[7] Abbot *v.* American Hard Rubber Co., 33 Barb. (N. Y.) 578 (1861); Denike *v.* New York, etc. Co., 80 N. Y. 599 (1880); People *v.* Ballard, 134 N. Y. 269, 32 N. E. 54 (1892); Byrne *v.* Schuyler Electric Mfg. Co., 65 Conn. 336, 31 Atl. 833 (1895); Banks *v.* Judah, 8 Conn. 145 (1830); Forrester *v.* Boston, etc. Copper, etc. Co., 21 Mont. 544, 55 Pac. 229, 353 (1888); Lauman *v.* Lebanon Valley R. Co., 30 Pa. St. 42 (1858); March *v.* Eastern R. Co., 43 N. H. 515 (1862); Boston & Providence R. Co. *v.* New York, etc. R. Co., 13 R. I. 260 (1881); Nathan *v.* Tompkins, 82 Ala. 437, 2 So. 747 (1886); De la Vergne, etc. Co. *v.* German Savings Institution, 175 U. S. 40, 20 Sup. Ct. 20 (1899); Easun *v.* Buckeye Brewing Co., 51 Fed. 156 (1892); McCutcheon *v.* Merz Capsule Co., 71 Fed. 787 (1896).

In Matter of Timmis, 200 N. Y. 177, 93 N. E. 522 (1910), it was held that the directors and majority stockholders had no power to sell out an important department of a corporation's business, the court saying that such a sale involved the going out of business *pro tanto*.

[8] The Supreme Judicial Court of Massachusetts adopted a contrary rule in Treadwell *v.* Salisbury Mfg. Co., 7 Gray (Mass.) 393 (1856), but even in that case the decision was in part based upon the condition of the corporation's affairs.

ity to bring the enterprise and the life of the corporation to an end whenever, for any reason, they might desire to withdraw their capital and to quit the venture.

The tendency of human affairs to become complicated — by no means diminished when the interests of many converge, as in the case of an enterprise conducted by a stock corporation — and the inclination of man to seize and apply any available instrument to his present purpose without regard to whether or not the instrument was originally designed for that purpose, have produced cases in which these statutes have been made to play a part which seems outside their original scope.

Among the ulterior objects which it has been sought to accomplish through a formal or pretended dissolution are: (a) unauthorized consolidation with another corporation; (b) reorganization in order through a new corporation to enter upon undertakings *ultra vires* of the existing corporation; (c) reorganization for the purpose of eliminating contentious or uncongenial stockholders; (d) sale to majority stockholders or a corporation controlled by them for the purpose of defrauding the minority of their interest; (e) the extinguishment of contracts beneficial to the corporation but burdensome to the majority stockholders.

That there can be no consolidation of corporations except as authorized by a statute existing at the time of their formation, or pursuant to power reserved for that purpose, is plain: first, because consolidation involves the creation, transfer, or extinguishment of corporate franchises, which depend upon legislative grant; and, second, because the agreement among the stockholders is that the capital contributed by them shall be employed in the corporation in which they actually invest, and not in *any* corporation, with any objects, powers, or capital. It would be strange if these conditions could be supplied or dispensed with by a statute which on its face was passed for the single purpose of permitting dissolution.

The statement that an undertaking is *ultra vires* implies that the stockholders have never consented to engage in it. It is not to be questioned that dissolution statutes afford stockholders a method of withdrawing their capital from the particular enterprise for which a corporation was chartered, with liberty to employ it in any other, however different; but this is far from permitting a ma

jority to take with them into new fields the property or good-will of the corporation, compelling the minority, under the form of a dissolution, to join them, or to take their distributive share of a fund which it is the majority's interest to make as small as possible.

There are cases in which it is sought to distinguish an attempt, by a colorable dissolution, to force a stockholder to abandon his interest in an enterprise or to raise capital enough to buy the entire property at a sale fairly conducted, and a similar transaction in which some deception or trickery is practiced. There can be no valid distinction between such cases, except in the mere classification of the majority's action as legal or moral fraud; and, if the transaction is tainted by either, it cannot stand.

The question of law presented in all these cases is substantially the same: May a majority of the stockholders, against the protest of the minority, by merely observing statutory forms, dissolve a corporation, and by a transfer of the physical properties or good-will to themselves or to another corporation continue the business freed from the limitations of the charter under which the enterprise was undertaken?

An attempt by the majority to cancel a contract which their interest as stockholders would preserve, but which their interest as individuals leads them to destroy, raises questions in their nature different from those that have been discussed. The separate interest of the majority as contractors introduces a new element. Such cases are, however, controlled by a like principle. The implied agreement that the affairs of the corporation shall be conducted as the majority shall determine, is conditioned upon the power of the majority being exercised in the interest of the corporation and of the stockholders as a whole. That a stockholder should be permitted, through his ownership of a majority of the shares, to release a debt due from himself to the corporation, is unthinkable; and no reason is apparent why the same result, accomplished by a dissolution, is any less a fraud upon the rights of other stockholders.

One of the first cases involving an attack upon the sale of a corporation's property through dissolution proceedings arose in the circuit court of the United States in 1886.[9] In that case there

[9] Ervin *v.* Oregon Ry. & Nav. Co., 27 Fed. 625.

appears to have been a regular statutory dissolution, followed by a sale of the corporation's property to a new corporation formed by a majority of the stockholders for the purpose of acquiring it. The minority stockholders were excluded from further participation in the enterprise, and were limited to their proportionate share of the proceeds of the sale. The case was in part disposed of upon the ground of unfairness in the method of appraisal and inadequacy of the price, and the relief granted to the minority took the form of money damages; but Judge Wallace declared that dissolution pursuant to a preconceived scheme of the majority stockholders to acquire the corporation's property and continue the business in their own interest was none the less a fraud "because accomplished by the agency of legal forms," saying:

"The defendants have adjusted their own interests on the basis of a consolidation of the two corporations and a continuance of their business as a joint venture; but they now insist that the interests of the minority stockholders, who have not been permitted to participate with them, shall be adjusted on the basis of a dissolution, and cessation of the business which they originally associated together to conduct. . . . They repudiate the suggestion of fraud, and plant themselves upon their right to control the corporate interests according to their discretion. They err if they suppose that a court of equity will tolerate a discretion which does not consult the interests of the minority. . . . It is of the essence of the contract [of incorporation] that the corporate powers shall only be exercised to accomplish the objects for which they were called into existence, and that the majority shall not control those powers to pervert or destroy the original purpose of the corporators."

Since Judge Wallace's decision in the Ervin case a number of cases have arisen in the state courts in which a different view has been taken of the majority's powers under dissolution statutes. In two of these cases[10] the corporation dissolved was a national bank, and in each case the holders of a majority of the stock had under a colorable dissolution taken to themselves the business and good-will of the bank, limiting the minority to their distributive share of the tangible assets. Slattery *v.* Greater New Orleans Realty, etc. Co.[11] presented a similar controversy in the case of a trading

[10] Watkins *v.* National Bank of Lawrence, 51 Kan. 254, 32 Pac. 914 (1893); Green *v.* Bennett, 110 S. W. 108 (Tex. Civ. App., 1908; writ of error granted by Supreme Court).

[11] 128 La. 871, 55 So. 558 (1911).

corporation.[12] In all these cases it was held that where dissolution is ordered by the prescribed vote of stockholders, and the sale is fairly conducted, the minority may not complain even if the dissolution is but a step in a preconceived plan of a part of the stockholders to continue the business, and the use of the same property, in their own interest.

The decision of Judge Kirkpatrick in Windmuller *v.* Standard, etc. Co.[13] has received special attention because of the extreme hardship that the minority stockholders suffered by the application of the rule that equity will not interfere with the exercise of a statutory right, except to prevent or redress fraud. In that case it appeared that the holders of the preferred and common stock of a manufacturing corporation had transferred all the common stock of their company to a holding company, in consideration of which the holding company guaranteed the payment of certain dividends upon the preferred stock of the manufacturing corporation during the existence of the latter, which seems to have been unlimited, except by a provision of a statute permitting corporations to go into voluntary dissolution upon vote of two-thirds of their stockholders. The holding company paid the guaranteed dividends for some years, and then, finding the contract of guaranty burdensome, proposed that the manufacturing corporation be dissolved. By the transfer of the complainants' shares of common stock the holding company had acquired control of the manufacturing company, including the voting power required by statute to dissolve the corporation. Thus it could, if this voting power were absolute, cancel the contract of guaranty at will by putting an end to the life of the manufacturing company. The court held that, in the exercise of his power to vote, a stockholder, even one holding a majority of the stock of a corporation, may disregard all interests but his own; and that, in the case presented, the complaining stockholders must be deemed to have accepted the contract of guaranty subject

[12] In State *v.* Chilhowee Woolen Mills Co., 115 Tenn. 266, 89 S. W. 741 (1905), the corporation had not acquired any property or begun business operations. Elbogen *v.* Gebereux Flynn Co., 50 N. Y. App. Div. 623, 64 N. Y. Supp. 1 (1900), and Treadwell *v.* United Verde Copper Co., 134 N. Y. App. Div. 394, 119 N. Y. Supp. 112 (1909), were disposed of upon the ground of estoppel; but in the latter case judgment dismissing the complaint was conditioned upon a tender being made to the plaintiff of his proportionate share of stock in the reorganized company.

[13] 114 Fed. 491 (1902).

to its extinguishment at the will of the guarantor. Despite the harshness of the result in this case, it is to be observed that the contract which was canceled by the dissolution was one between the holding company and the stockholders of the manufacturing company in their individual capacity; and a contrary decision must have rested upon the principle that it is one of the implied terms of every contract that a party shall do nothing to render his own performance impossible, and not upon any right or obligation peculiar to the relation of stockholder.

The gist of these decisions is, that dissolution statutes confer upon a given proportion of stockholders an unqualified right; that these statutory provisions enter into the contract of incorporation, and limit the interest of every stockholder; that the power to dissolve, being absolute, cannot be affected by the motive of the stockholder; and that accordingly, in the absence of actual fraud, the exercise of this power is not subject to judicial review.

This is not entirely satisfying as logic, and as an expression of judicial impotence is the reverse of impressive.

It would not be difficult to adduce illustrations of the proposition that an act which, standing alone, is neutral or indisputably legal, may be obnoxious to the law when considered as a part of a general scheme or course of action which has for its end the working of a wrong. Nor is it invariably true that a wrongful motive can never invalidate an act otherwise valid. A familiar example, sufficient to disprove the existence of such a rule, is the case of a conveyance by an insolvent debtor, the validity of which is determined by the intent of the parties.

Why any peculiar sanctity should attach to a vote by stockholders, even when given in the exercise of a statutory right, is not clear. Judge Sanborn's opinion in the case of Jones *v.* Missouri-Edison Co.,[14] in the Circuit Court of Appeals, contains an intimation that this judicial timidity in dealing with the result of stockholders' votes grows out of a misapplication of the rule that neither the existence of a corporation nor the right to the exercise of corporate franchises can in general be questioned except by the state. That was a case in which the holders of a majority of the stock of a corporation, in pursuance of a statute, as well as of a preconceived scheme to benefit themselves at the expense of the minority, had

[14] 144 Fed. 765 (1906).

voted consolidation with another corporation whose stock they owned. The court held that the consolidation was a fraud in law upon the minority stockholders, an abuse of the fiduciary relation which the majority stockholders bore to the minority, and was voidable at the suit of the corporation or of a stockholder. It was further held that the general rule regarding the invulnerability of corporate franchises had no application to a suit by a minority stockholder, to avoid for fraud or breach of trust an act of consolidation and to restore to the corporation injured, or to its stockholders, the franchises and property transferred to the consolidated company.

Barrett *v.* Bloomfield Savings Institution [15] was a suit by a depositor in a savings bank to enjoin the voluntary dissolution of the savings bank for the purpose of transferring its accounts and good-will to a trust company formed by the trustees. In granting an injunction Vice-Chancellor Pitney said:

"They [the trustees] had no more right, by any sort of contrivance, to destroy the entity of the corporation while transferring to themselves its most valuable asset — its good-will — than an ordinary trustee of property has to purchase the property himself, though paying a fair price for it."

Theis *v.* Spokane Falls Gas Light Co.,[16] decided by the Supreme Court of Washington in 1904, was a stockholder's suit brought originally to enjoin a sale of the property of a corporation and to annul dissolution proceedings alleged to have been taken by the holders of a majority of the stock as a part of a scheme to eliminate the plaintiff as a stockholder, to acquire the corporation's property and continue its operation in their own interest. A motion to enjoin the sale was denied, after which the property was sold and bought by a representative of the majority stockholders and conveyed to a corporation formed in their interest. The plaintiff then filed a supplemental complaint, bringing in the purchasing corporation as a defendant. The Supreme Court reversed the decision of the lower court, and directed judgment not only setting aside the sale, but annulling the dissolution proceedings.[17]

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[15] 64 N. J. Eq. 425, aff'd in 66 N. J. Eq. 431, 54 Atl. 543 (1903).

[16] 34 Wash. 23, 74 Pac. 1004.

[17] The following extract from the court's opinion by Dunbar, J., is pertinent to the present discussion:

"The real question to be determined here is, whether or not the statute confers

In the case of White *v.* Kincaid [18] the Supreme Court of North Carolina reversed an order granting an injunction, upon the ground that there was no proof in the record of any scheme by the majority to buy the property of the corporation or otherwise to oppress the minority, beyond the mere fact that dissolution was resolved upon; but the court expressly recognized the limitation of the majority's powers under a dissolution statute to a winding up in good faith.

A very recent decision by the New Jersey Court of Errors and Appeals in Riker *v.* United Drug Co.[19] is of special interest, for the

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power upon a two-thirds majority of a prosperous corporation to disincorporate and dispossess minority stockholders of their stock by paying them the market price for the same. . . . Under the provisions of this statute, it is the contention of the respondents that an absolute right is given a two-thirds majority to dissolve the corporation whenever they see fit; and the broad ground is taken, that, inasmuch as the corporation is acting within its legal capacity, the court has no right to inquire into the motive which actuated the moving stockholders; that its only concern is to see that the formal legal requirements have been complied with; and such was evidently the theory adopted by the trial court. This, in a sense, is true, and would apply to this case if the actual attempt was to dissolve the corporation, within the meaning of the law. But a court of equity will never aid in the perpetration of a fraud simply because application is made in empty form of law. Its powers are not so superficial, or so restricted. . . . A dissolution of a corporation within the contemplation of the law is the death of the corporation. It means a disintegration, a separation, a going out of business. But in this case, all of the elements of the dissolution are wanting. The corporation, with a slightly different name, proceeded in the same town, with the same property, the same powers, and substantially the same owners. All the difference is about what was testified by the president of the corporation that, after the new company was formed, the minority stockholders' interest would be represented by a deposit in the bank instead of stock in the corporation. It might with as much reason be concluded that a man could escape responsibilities by changing his name, and that, by such change, his moral or financial relations with those with whom he was engaged in business under the old name would be affected. It is not enough to say that appellant received all his stock was worth. He embarked in this business, and had a right to stay in the business during the expressed life of the corporation, or until it was dissolved by a fair compliance with the law."

Upon the practical effect of a construction permitting reorganization under color of dissolution, the court said:

"The result of a successful practice such as is attempted here will be that minority stockholders will always be at the mercy of the majority. If the enterprise fails, they bear their proportion of the losses. If, on the other hand, it succeeds, as soon as it passes the experimental stage, and the opportunity is presented to finally reap the reward of a judicious investment, they are coolly ejected from the corporation by a majority of the stockholders, who appropriate to themselves the accruing profits. In other words, they might be termed experimental dupes, who are subjected to the necessity of contributing to the losses, but denied the privilege of sharing the profits."

[18] 149 N. C. 415, 63 S. E. 109 (1908).

[19] 82 Atl. 930 (N. J., 1912).

reason that the case presents the question of the nature and extent of the statutory power to dissolve unembarrassed by the element of fraud, except in the legal sense of an attempt by open methods to work a change in legal relations without warrant of law. The decision is unique also in directly enjoining the exercise by stockholders of the voting power of stock admittedly owned by them and unaffected by any agreement except that contained in the charter of the corporation.

According to the New Jersey statute, dissolution is had by vote of the directors declaring such action advisable, followed by vote of the stockholders at a meeting called by the directors for that purpose. The directors adopted a resolution in favor of dissolution, and called a meeting of the stockholders to vote upon the question. Before any action by the stockholders, the suit was begun, attacking the transaction upon the ground that the proposed dissolution was one in form only, it appearing that the dissolution proceedings were being taken as a part of a plan by the majority to transfer the property to a corporation newly formed in another state for the purpose of continuing the business. This case was free from any question of discrimination against the minority, for they were invited to share in the stock of the new company equally with their fellow stockholders. Upon appeal the majority stockholders earnestly contended that whatever relief might be granted the minority by way of safeguarding their interests at the sale, it was an unheard-of thing and beyond the judicial power to interfere with the statutory right of the majority to vote according to their inclination or interest.

The appellate court held the entire scheme to be outside the scope of the statute permitting dissolution, and found no difficulty, metaphysical or practical, in preventing the proposed action by enjoining the directors from submitting the proposal to the vote of the stockholders. In his opinion Chief Justice Gummere said:

"The proposed plan for the so-called 'reorganization' of the defendant company is, therefore, in violation of the law of the state whose creature it is; and, this being so, any stockholder who refuses to consent thereto is entitled to the aid of a court of equity to prevent its being carried into execution. Each stockholder of the company owns a share in its property and assets, and is entitled to have a proportionate share in its profits. They have invested their capital in it, and in it alone; and

they are entitled to every dollar that it earns. This is the agreement of the stockholders among themselves. They each contract with the other that their money shall be employed for the purposes specified in the certificate of incorporation, and for no other purpose, and that the profits of the enterprise shall be ratably apportioned among them. In the absence of legislation permitting a variation of the provisions of this fundamental contract, by vote of a majority of the stockholders, no majority, however large, has a right to divert any part of the joint capital, however small, to any purpose not consistent with and growing out of this original, fundamental agreement. The scheme, in the carrying out of which the dissolution of the company is a proposed step, is a fraud upon the statute (the word is used in a legal, not moral, sense); and every act done in furtherance thereof, no matter whether it be legal, standing alone, or not, is equally a fraud upon the statute."

The case of Theis *v.* Durr [20] presented a question analogous to that involved in the dissolution cases. That was a suit by minority stockholders to annul the proceedings of the holders of a majority of the stock in voting to reduce the capital stock of the corporation. The plaintiffs had paid for their stock in full, and the defendants had paid only part of their subscriptions. The defendants, holding a majority of the stock, refused to call in the unpaid subscriptions, and borrowed money to meet the current obligations of the corporation. It was shown that the proceedings for reduction of capital stock, though regular in form and in conformity to statute, were taken to relieve the majority stockholders from liability on their subscriptions. It was held that although the proceedings for reduction, standing alone, might be regular and valid, a court of equity had power to look to the purposes of the majority, and where the mainspring of the transaction was an ulterior motive, which if given effect would work a wrong to the corporation or minority stockholders, the entire proceedings would be annulled.

Dissolution statutes very generally provide for a sale of a corporation's assets and distribution of the proceeds under the supervision of the existing board of directors, who are constituted trustees for the purpose of settling the corporation's affairs. It seems a matter of course that in all such cases the trustees are debarred from purchasing from themselves, or at least that any sale

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[20] 125 Wis. 651, 104 N. W. 985 (1905).

to the trustees or to a corporation controlled by them is voidable at the suit of a stockholder.[21]

Even where the technical relation of trustee does not exist, it is undoubtedly the law that the majority stockholders, who have the power to elect directors, bear to the corporation and to minority stockholders a relation fiduciary in its nature to the extent that their action is subject in equity to judicial scrutiny and review.[22]

The familiar and now universal rule by which each stockholder of a corporation has as many votes as he owns shares, is statutory. At common law the members had equal voting power; and it has been held that, in the absence of a statute on the subject, the common-law rule applies to stock corporations.[23] The common-law rule, although an arbitrary one, and doubtless imperfect in its operations, gave to the corporation the benefit of the judgment and interest of every member. Perhaps a perfect rule would have allotted to each member a voting power commensurate with his virtues and abilities. Among other changes wrought by the invention of the corporation with a capital stock divided into shares, was a diversity in the quantity of the interest of members, due to the fact that one person might be the owner of a number of shares. Since the stock corporation has been from its origin almost exclusively an instrument of commerce, it was to be expected that any change in the basis of voting power should take account of this diversity of interest, but according to the rule as generally established by statute, voting power is based solely upon interest. It results from this rule that the owner of a bare majority of the shares of a corporation, however numerous or wise or virtuous the holders of the remaining shares may be, has the exclusive power to enact

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[21] Chicago Hansom Cab Co. *v.* Yerkes, 141 Ill. 320, 30 N. E. 667 (1892); Cumberland Coal & Iron Co. *v.* Sherman, 30 Barb. (N. Y.) 553; Hoffman Steam Coal Co. *v.* Cumberland Coal & Iron Co., 16 Md. 456 (1860).

[22] Farmers' Loan & Trust Co. *v.* New York, etc. R. Co., 150 N. Y. 410, 44 N. E. 1043 (1896); Barr *v.* New York, etc. R. Co., 96 N. Y. 444 (1884); Memphis & Charleston R. Co. *v.* Woods, 88 Ala. 630, 641, 7 So. 108, 112 (1889); Wright *v.* Oroville Mining Co., 40 Cal. 20 (1870); Jackson *v.* Ludelling, 21 Wall. (U. S.) 616 (1874); Wardell *v.* Railroad Co., 103 U. S. 651 (1880); Meeker *v.* Winthrop Iron Co., 17 Fed. 48 (1883); Sidell *v.* Missouri Pacific Ry. Co., 78 Fed. 724 (1897); Jones *v.* Missouri Edison Co., 144 Fed. 765 (1906); Wheeler *v.* Abilene Co., 159 Fed. 391 (1908); Menier *v.* Hooper's Telegraph Works, L. R. 9 Ch. 350 (1874); Noyes, Intercorporate Relations, § 300.

[23] Taylor *v.* Griswold, 14 N. J. L. 222 (1834).

by-laws, to elect directors, and through them to select officers, to determine the policy of the corporation, and to conduct all its affairs. The only limitation of these powers is that they shall be exercised for the attainment of the objects for which the corporation was chartered, and in the interest of the corporation and all of its stockholders. In addition, he is invested by special provisions of statute with the extraordinary powers of amending the charter, of increasing or decreasing the amount of the capital, of consolidating the corporation with another corporation, and even of bringing the life of the corporation to an end whenever he may decide to withdraw from the enterprise. The possibilities of abuse of the power of majority stockholders to control the property and affairs of others are such that it is likely that the development of the law of corporations must for some time be largely in the direction of limiting the powers of the majority and of safeguarding the interests of the minority. For the present it does not seem too much to require that these extraordinary grants of power shall not be stretched to cover purposes for which they never were designed.

The later decisions which seem to limit the absolute character of the voting power of majority stockholders, when applied to dissolution under statutes, may, it is thought, be sustained upon the narrow ground that these statutes were enacted for a specific purpose, and cannot be perverted to any other use. Given a more general application, the decisions commend themselves as a vindication of the ancient power of equity to pierce forms and shams, to lay bare the controlling realities, and to enforce justice.

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